

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE ORDER

IN THE MATTER OF:	
Annie's, LLC DBA Togie Pub	ADMINISTRATIVE ORDER
	NO. 2014-WS-05
Public Water Supply Facility No. 4564201	

TO: Anne Ferrie, Member and Registered Agent Sheryl Sovereign
Annie's, LLC Togie Pub
7011 River Road 8757 State Highway 9
Chester, IA, 52134 Lime Springs, IA 52155

I. SUMMARY

This administrative order (order) is issued to Anne Ferrie, Member of Annie's, LLC, and to Sheryl Sovereign, Operator and Manager of the Togie Pub, by the Iowa Department of Natural Resources (Department). This order is issued to resolve bacteria and nitrate monitoring violations. This order requires you to:

1. Sample this public water supply (PWS) for coliform bacteria at least once per month, submit the sample to a laboratory certified by the Department, and perform required follow-up sampling when a positive result is obtained;
2. Sample this PWS for nitrate annually and submit the sample to a laboratory certified by the Department;
3. Hire and maintain the services of a PWS operator certified by the Department to operate this PWS system;
4. Comply with all monitoring requirements and all other conditions of this facility's PWS operation permit (permit);
5. Provide public notice as required by this order and as required by the Department in the future;
6. Pay an administrative penalty of \$3,500.00 and annual water supply fees of \$250.00 for fiscal years 2014 and 2015 to the Department within 60 days of receipt of this order.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Marie Leat
Environmental Specialist
Iowa Department of Natural Resources

Relating to legal requirements:

Diana Hansen
Attorney at Law
Iowa Department of Natural Resources

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502 East 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/725-0358

502 East 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/281-6267

Direct payment of penalty to:

Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10 (455B), which authorize the Director to assess penalties.

III. STATEMENT OF FACTS

1. Anne Ferrie is a member of and a registered agent for Annie's, LLC. Annie's, LLC owns the property on which the Togie Pub is located. The Togie Pub is operated as a restaurant and bar and is located at 8495 Highway 9, Lime Springs, Iowa 52155. Annie's, LLC owns the property on which the PWS system that serves the Togie Pub and another property is located. The PWS system, restaurant and bar were known as Annie's until June 1, 2013. At that time Sheryl Sovereign entered into a lease with Annie's, LLC and took over operation and management of the restaurant and bar. The restaurant and bar name was changed to the Togie Pub.

2. The PWS system derives its water from one PWS well. The PWS system includes the well, the treatment plant and all water storage, distribution system piping, and other appurtances associated with a PWS system. Water is provided by one well to a house and to another building, which contains an apartment, and to the Togie Pub restaurant and bar. The well is located immediately west of the Togie Pub building. The well was constructed in 1990 to a depth of 120 feet and is equipped with a ½ horsepower submersible pump. Pressure and storage are provided by a 25 gallon pressure tank located in the basement of the neighboring house. The water is treated with a conventional water softener and in-line filter, which are also located at the neighboring house. At the Togie Pub, water is provided to two toilets, three hand washing sinks, one three compartment sink, one four compartment sink, and one mop sink in the bar. This PWS system serves 25 to 60 people per day. The facility is classified by the Department as a transient noncommunity PWS system.

3. On October 24, 2012, the Department's Water Supply Operation Section (WSOS) issued Annie's, LLC a permit for the PWS system. The permit required monthly

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sampling for total coliform bacteria and annual (once per year) sampling for nitrate. On June 14, 2013, a permit revision was issued to Sheryl Sovereign as manager and operator of the Togie Pub due to the name and management change. The revised permit required monthly sampling for total coliform bacteria and annual (once per year) sampling for nitrate.

Coliform Bacteria Monitoring and Reporting

4. The October 24, 2012 permit and the June 14, 2013 permit required the PWS system for this facility to be monitored for coliform bacteria at least once per month. Department rules also require that when a routine coliform bacteria sample is analyzed as containing coliform bacteria, additional recheck and routine samples shall be taken. These samples must be analyzed at a laboratory certified by the Department to conduct testing of Safe Drinking Water Act (SDWA) samples for coliform bacteria.

5. On May 29, 2013, an Environmental Specialist from the Department's Field Office No. 1 (FO 1) met with Sheryl Sovereign, the new operator and manager of the restaurant and bar. She informed the Department staff person that her lease would begin June 1, 2013 and that she would begin collecting samples. She also indicated that the restaurant and bar name would be changed to the Togie Pub.

6. The Togie Pub failed to take the required monthly coliform bacteria samples on numerous occasions and was notified of coliform bacteria monitoring violations by notice of violation (NOV) letters. The Togie Pub was sent numerous NOV letters for failure to sample for coliform bacteria during the period of July 1, 2013 through July 31, 2014. The NOV's and public notice instructions sent with the NOV letters additionally advised the Togie Pub that public notification was required to be given and that proof of public notice was required to be submitted to the Department. The Department has not received proof that public notice for these monitoring violations was given.

7. On June 25, 2013, Cerro Gordo County Health Department (CGCHD) conducted a water supply site inspection at the Togie Pub. The CGCHD is under contract with the Department to perform such inspections.

8. On August 19, 2013, an NOV letter was issued by the WSOS to the Togie Pub for a monthly coliform bacteria monitoring violation for July 2013. Public notice was required for the violation as stated in the NOV letter. The WSOS did not receive proof that public notice was given.

9. On September 20, 2013, an NOV letter was issued by the WSOS to the Togie Pub for a monthly coliform bacteria monitoring violation for August 2013. Public notice was required for the violation as noted in the NOV letter. The WSOS did not receive proof that public notice was given.

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10. On October 17, 2013, an NOV letter was issued by the WSOS to the Togie Pub for a monthly coliform bacteria monitoring violation for September 2013. Public notice was required as noted in the letter. The WSOS did not receive proof that public notice was given.

11. On November 20, 2013, an NOV letter was issued by the WSOS to the Togie Pub for a monthly coliform bacteria monitoring violation for October 2013. Public notice was required for the violation as stated in the NOV letter. The WSOS did not receive proof that public notice was given.

12. On December 17, 2013, an NOV letter was issued by the WSOS to the Togie Pub for a monthly coliform bacteria monitoring violation for November 2013. Public notice was required for the violation as noted in the NOV letter. The WSOS did not receive proof that public notice was given.

13. On February 18, 2014, an NOV letter was issued by the WSOS to the Togie Pub for a monthly coliform bacteria monitoring violation for January 2014. Public notice was required as noted in the letter. The WSOS did not receive proof that public notice was given.

14. On March 18, 2014, an NOV letter was issued by the WSOS to the Togie Pub for a monthly coliform bacteria monitoring violation for February 2014. Public notice was required for the violation as noted in the NOV letter. The WSOS did not receive proof that public notice was given.

15. On April 16, 2014, an NOV letter was issued by the WSOS to the Togie Pub for a monthly coliform bacteria monitoring violation for March 2014. Public notice was required as noted in the letter. The WSOS did not receive proof that public notice was given.

16. On May 16, 2014, an NOV letter was issued by the WSOS to the Togie Pub for a monthly coliform bacteria monitoring violation for April 2014. Public notice was required for the violation as stated in the NOV letter. The WSOS did not receive proof that public notice was given.

17. On July 17, 2014, an NOV letter was issued by the WSOS to the Togie Pub for a monthly coliform bacteria monitoring violation for June 2014 and an annual nitrate monitoring violation for the sample due by June 30, 2014. Public notice was required for the violations as noted in the NOV letter. The WSOS did not receive proof that public notice was given.

18. On August 18, 2014, an NOV letter was issued by the WSOS to the Togie Pub for a monthly coliform bacteria monitoring violation for July 2014. Public notice was required for the violations as noted in the NOV letter.

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Nitrate Monitoring Requirements

19. The current permit issued on June 14, 2013 for this PWS requires annual (once per year) nitrate monitoring. The prior permit also required annual nitrate monitoring. Nitrate samples are required to be analyzed at a laboratory certified by the Department to conduct testing of SDWA samples for coliform bacteria.

20. The WSOS notified the Togie Pub of a nitrate monitoring violation through an NOV letter sent on July 17, 2014. The NOV letter was issued due to failure to sample for nitrate by June 30, 2014 as required by the permit. The NOV letter and public notice instructions sent with the letter advised the facility owner that public notification was required to be given for the nitrate monitoring violation and that proof of giving public notice was required to be furnished to the Department. To date the Department has not received proof that public notice for the nitrate monitoring violation was given.

Certified Operator

21. By a letter dated July 28, 2014, the WSOS informed the Togie Pub of referral to the Department's Legal Services Bureau for enforcement action. The letter stated that the referral was due to this facility's monitoring violations for coliform bacteria and violations of public notification requirements. The number of violations indicates that this facility is in need of a Department certified PWS Grade A operator to oversee permit requirements for monitoring and public notification. This order will require the hiring of a Grade A certified operator to be in direct responsible charge of this PWS system to ensure that permit requirements are met.

Public Notice Requirements

22. The Togie Pub has received numerous coliform bacteria monitoring violations and one nitrate monitoring violation since it began operation as the Togie Pub on June 1, 2013. The information sent with the NOV letters that informed the Togie Pub of monitoring violations provided instructions and a sample for giving public notification. Despite public notice instructions and a sample notice, the Togie Pub failed to give public notice of monitoring violations. The WSOS issued NOV's to the Togie Pub for failure to provide public notification of monitoring violations on December 17, 2013; January 21, 2014; February 18, 2014; March 18, 2014; April 18, 2014; June 18, 2014; and July 22, 2014. The Department has not received proof of providing public notification for any of the monitoring violations despite the requirement to provide public notification and to provide proof to the Department that public notice was provided and despite public notice reminder letters from the Department.

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Annual Water Supply Fee

23. On June 28, 2013, the Department sent the annual water supply fee letter and invoice for the 2014 fiscal year to the Togie Pub. The letter advised the Togie Pub that payment of the \$25.00 annual water supply fee was due by September 1, 2013. The fee was not remitted timely as required by the invoice. On September 3, 2013, the Department sent a second notice to this PWS advising that the fee had not been received. A late fee of \$100.00 was added since the annual water supply fee was not paid by the original due date. These fees have not been paid to date. The annual water supply fee for fiscal year 2015 was due by September 1, 2014. Since the annual water supply fee for fiscal year 2015 was not paid by that date, a late fee of \$100.00 has been assessed, increasing the fee due to \$125.00 for fiscal year 2015.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.172 makes this Department the agency of the state to conduct the PWS program. Iowa Code section 455B.171 defines a PWS system as a system for the provision of piped water for human consumption, if the system has at least fifteen service connections or regularly serves at least twenty-five individuals. Iowa Code sections 455B.173(3), (5), and (6) authorize the Environmental Protection Commission (Commission) to promulgate rules relating to the operation of PWS systems and to adopt drinking water standards to assure compliance with federal standards adopted pursuant to the federal Safe Drinking Water Act. The Commission has the authority to adopt rules relating to monitoring, record keeping, and reporting requirements for any PWS. The Commission has adopted such rules at 567 IAC chapters 40- 43.

2. Rule 567 IAC 40.2(455B), further defines PWS by defining "community water system" as a PWS which has at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents, consistent with federal regulations. A "noncommunity water system" is any other PWS. This facility is a transient noncommunity water system.

3. Rule 567 IAC 40.2(455B) further defines a "transient noncommunity water system" (TNC) as "a noncommunity water system that does not regularly serve at least 25 of the same persons over six months per calendar year." This facility is a transient noncommunity water system.

Public Water Supply Operation Permit

4. 567 IAC 43.2(2) indicates "Except as provided in 43.2(3) and 43.2(4), no person shall operate any public water supply system or part thereof without, or contrary to any condition of, an operation permit issued by the director." This facility has operated a PWS system contrary to conditions of its permit, as stated above in Section III Statement of Facts.

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Bacteria Monitoring

5. 567 IAC 41.2(1) requires a transient noncommunity water system to be sampled for coliform bacteria at least once per calendar quarter. More frequent sampling may be required and was required by the revised permit issued for this facility. When positive results are obtained in a routine sample, additional follow-up sampling is required. Subparagraph "c" (1) of the subrule requires that bacterial samples must be collected at sites which are representative of water throughout the distribution system, according to a written sampling plan that meets the criteria of the subparagraph.

6. Subrule 83.1(3) requires the samples to be analyzed for coliform bacteria at a laboratory certified by the Department to conduct testing of Safe Drinking Water Act (SDWA) samples. Subrule 42.4(1) requires that the analytical results be reported to the Department within ten days after the test. Subrule 42.5(1) requires a PWS system to retain records of bacteria analyses of its water supply for a period of five years. This facility has had repeated coliform bacteria monitoring violations, as stated above in Section III. Statement of Facts.

Nitrate Monitoring

7. Subrule 41.3(1), subparagraph "c"(5), requires a transient noncommunity water system to be sampled at least once every year, and have the samples analyzed for nitrate, in accordance with prescribed analytical procedures. Repeat monitoring is required to be quarterly for at least one year following any one sample in which the concentration is greater than or equal to 5.0 mg/L as N. The Department may allow a ground water system to reduce the sampling frequency to annually after four consecutive quarterly samples are reliably and consistently less than 5.0 mg/L as N. The repeat monitoring frequency is required to be monthly for at least one year following any one sample in which the concentration is greater than or equal to 10.0 mg/L as N.

8. Subrule 83.1(3) requires the samples to be analyzed for nitrate at a laboratory certified by the Department to conduct tests of SDWA samples. Subrule 42.4(1) requires that the analytical results be reported to the Department within ten days after the test. Subrule 42.5(1) requires a PWS system to retain records of chemical analysis of its water supply for a period of ten years. This facility has received one nitrate monitoring violation for failure to take a yearly sample, as stated above in Section III. Statement of Facts.

Certified Operator

9. Iowa Code sections 455B.211- 455B.223 provide the statutory authority for the Department's operator certification program. The Commission has adopted rules relating to certified operators in 567 IAC 43.1(5) and for certification requirements in 567 IAC chapter 81.

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Public Notification of Violations

10. Subrule 567 IAC 42.1(4) requires the owner or operator of a PWS system which fails to perform monitoring required by rule to notify persons served by the system within three months. Noncommunity systems may provide public notice by continuous posting in conspicuous places within the area served by the system.

11. The public notice is required to provide a clear and readily understandable explanation of the violation, the steps the system is taking to correct the violation, and include the telephone number of the owner, operator, or designee of the system as a source of additional information. Subrule 567 IAC 42.4(1)"c", provides that the PWS shall submit a representative copy of the public notice to the Department within ten days of completion of the notice. The Togie Pub did not comply with public notice requirements for failure to monitor on repeated occasions, as stated above in Section III. Statement of Facts.

Annual Water Supply Fee

12. Iowa Code section 455B.183A(2)"b" authorized the Commission to adopt fees for operation permits for PWS systems. This Iowa Code section imposed a \$25.00 fee on PWS systems not owned or operated by a community and serving a transient population. Subrule 43.2(1) was adopted pursuant to this Iowa Code section. This subrule requires payment of a nonrefundable fee for the operation of a PWS system by September 1, of each year. For transient noncommunity systems the fee is \$25.00. The subrule also allows the addition of a late fee of \$100.00 if the fee is not paid timely. This PWS has not paid the annual fee of \$25.00 and late fee of \$100.00 for fiscal year 2014, which was due by September 1, 2013. The \$25.00 annual fee for fiscal year 2015 was due by September 1, 2014 and was not paid timely. The annual fee and late fee now total \$125.00 for fiscal year 2015.

V. ORDER

THEREFORE, the Department orders Annie's, LLC and Sheryl Sovereign (Togie Pub) to comply with the following provisions in order to abate and redress violations of Department rules and the facility's PWS permit:

1. You are required to monitor this facility on a monthly basis for coliform bacteria and to maintain full compliance with the coliform bacteria monitoring requirements included in the permit and in letters from the Department. This includes taking all required repeat and additional routine samples required by the Department in the event of an unsatisfactory coliform bacteria sample.

2. You are required to sample this PWS for nitrate within thirty days of receipt of this order to satisfy the annual nitrate sampling requirement for 2014 and at least once per year thereafter as required by the permit, submit the samples to a laboratory certified by

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the Department for nitrate analysis, timely report the results to the Department, and maintain the record of such analyses for ten years.

3. You are required to provide public notice of the bacteria and nitrate monitoring violations as required by Department rules within 30 days of receipt of this order and submit proof of providing public notice to the Department within ten days of completion of the notice. You are required to provide public notice as required by the Department for any future coliform bacteria and nitrate monitoring violations.

4. You are required to hire and maintain the services of a Grade A certified operator to operate this PWS. The certified operator must be given all direct responsibility and authority necessary to insure operation of the system in full compliance with the rule and permit requirements. You must verify to the field office within 30 days of receipt of this order that a certified operator has been obtained. You are required to submit four notarized copies of the operator by affidavit form (IDNR Form 542-3119) to FO 1 in Manchester, Iowa. The affidavit form may be obtained from the field office by calling 563-927-2640.

5. An administrative penalty of \$3,500.00 and annual water supply fees of \$250.00 for fiscal years 2014 and 2015 are assessed by this order. The administrative penalty and annual water supply fees are required to be paid to the Department within 60 days of your receipt of this order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty.

a. Economic Benefit. There have been cost savings to the facility by not taking the samples required by the permit for this facility. The facility has avoided paying for the cost of sample analysis and the cost of shipping the samples to a certified laboratory. There have also been avoided costs for the savings in staff salary for the time not spent collecting and preparing samples for shipping and for the time not spent in preparing, posting, and delivering the public notice and in mailing the public notice certification to the Department. The total economic benefit assessed by this order is set at \$500.00.

b. Gravity of the Violation. One of the factors the Department considers in determining the gravity of a violation is the amount of penalty authorized by the Iowa

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Code for the type of violation. As indicated above, the Iowa Code authorizes substantial civil penalties. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Because of the importance of the safe drinking water program and self monitoring to the safe drinking water program, the Department assesses \$1,500.00 for this factor, due to multiple violations.

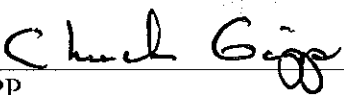
c. Culpability. The facility owner has received numerous contacts by the Department and the CGCHD by phone, letter, and site visits, all of which have been disregarded. The responsible party has been made fully aware of the responsibilities of a PWS. Despite these contacts, this PWS remains non-compliant with the stated rules and the permit issued for this facility. This order assesses the amount of \$1,500.00, due to multiple violations, for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175 and subrule 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, a written notice of appeal to the Commission may be filed within 30 days of receipt of this order. The notice of appeal should be filed with the Director of the Department, and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

VIII. NONCOMPLIANCE

Compliance with Section V. of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order. Failure to comply with this order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



CHUCK GIPP
DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 14th day of
October, 2014

Annie's, LLC DBA Togie Pub- Water Supply Facility No. 4564201, Marie Leat- Water Supply Operations Section, Sue Miller- Field Office No. 1, Diana Hansen- Legal Services Bureau, II.B.2.a.(1), II.B.2.a(2); II.B.2.g.